



UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/341,299	03/31/95	PORTERSON	XI/P6407120
			EXAMINER
000881 LARSON & TAYLOR, PLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA VA 22314			HM12/0625
			EX/ART UNIT
			PAPER NUMBER
			1616
			DATE MAILED:
			06/25/01

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 4/12/01
- ☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-29 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-29 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)):

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

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Receipt is acknowledged of Request for Time and Amendment (4/21/01).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The rejection of record is maintained. This invention requires continuous contact with the skin; thus the limitations requested are seen as critical elements in accord with the invention as disclosed. (See p. 6, lines 23-29, p. 7, lines 2-5). These pages indicate the ingredients and %, and show them as toxic.

Claims 1-29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite non toxic, contrary to the specification--please remove or further limit to be in accord with the specification.

Claims 1, 2, 5, 8, 16-18, 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Page-246335.

Insect repellent is mixed in melted wax and applies to a substrate fabric--the instant composition and methods (col. 1, p. 1). It produces no toxicity to skin (line 52-54, page 1) oil of winter green is added (line 61). It protects against vermin (line 5-7, page 1) and is used to apply

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or attach to other fabrics (line 33-41). No patentable weight is given to the adaptation or future intended use; the substrate claimed is shown by Page.

Claims 1, 2, 5, 8, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bartlett et al 253702 or Gates 2555330 or Newman et al 2535089.

Parasitic insects are repelled from a fabric substrate impregnated with a wax-petrolatum, and insect repellent--no patentable weight is given to future intended use of the instantly claimed article. It does not matter whether the article as claimed is attached, unattached, or which side is intended contact skin or clothing.

Claims 1, 15, 16, 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Tucci.

See example, V:

Solid carrier of DEET, wax is applied to fabric-this is the inventive insect repellent substrate-future intended use not given patentable weight. The fabric substrate can be used as one in the art would desire--in this case, forming inhibits and Col. 10, line 15-27) and other garments (col. 9, last paragraph). Parasitic insects are repelled (flies, ants, mosquitoes). Added fragrances are envisioned (col. 10, line 62). There is no preclusion to applying the garment, wax treated, to skin, or to attach to another garment of substrate (last paragraph, col. 10).

Claims 1-5, 8, 9, 17-21, 24, 28 and 29 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Metzner et al 4862832.

An absorbent strip, with adhesive, a strip of a solid carrier (3), coated on a fabric base strip (2) of (col. 3, line 26-40) of fabric materials-celluloses of wax (line 53-55) solid at room

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temperature (top, col. 4) with natural pyrethroid insect repellents (line 30-33; 45, 49). The instant method (claim 17) is also disclosed (col. 4, line 54-line 54-line 10, col. 5 and 1.1, col. 6).

Treating the hair results in active release (col. 5, lines 11-17).

No patentable weight is given to the fabric recitation, absent any specific material, as Metzner shows the instant materials as fabric/substrates. No patentable weight is given to future intended use on a garment; the Metzner invention is utilized by providing skin/hair contact, as is the instant invention. Scented oils (ground nut oil) may be added (table 1) pyrethrum, or other actives are at 5-98% (col. 4, line 45, 46, 64).

Applicant's arguments filed 4/12/01 have been fully considered but they are not persuasive. Applicants arguments are to the effect the prior art cited does not apply wax, solid, impregnated with repellent. Accordingly, rejections are withdrawn. However, amended claims continue to be rejected as indicated above).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

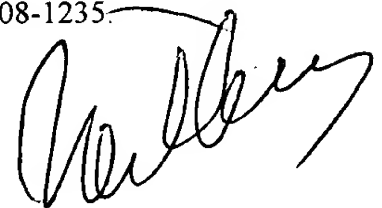
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday to Friday from 7 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv

June 13, 2001



NEIL S. LEVY  
PRIMARY EXAMINER